



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

159797

Memorandum

NHTSA-02-11419-2

Subject: Submission to Docket 2002-11419

Date: February 15, 2002

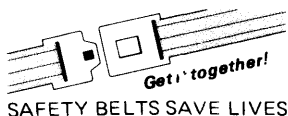
From: L. Robert Shelton
Executive Director

Reply to
Attn. of:

To: The Docket
Thru: John Womack
Acting Chief Counsel

On February 14, 2002, Jeff Shane, Associate Deputy Secretary-Designate, and I met with Porsche representatives to discuss their concerns about the impact of Corporate Average Fuel Economy on Porsche, compared to the impacts on their competitors. Attached is a copy of the Porsche presentation.

Attachment (1)





PORSCHE

CAFE Presentation

**Porsche Cars North America Inc.
&
Porsche AG**

February 14, 2002

ALTERNATIVE FUEL ECONOMY STANDARDS FOR SMALL VOLUME MANUFACTURERS

Alternative CAFE standards for small manufacturers have always been part of CAFE

Because small limited-line manufacturers have no ability to average compliance across model lines, alternative fuel economy standards have always been part of the CAFE program (Section 32902 of Title 49, U.S.C.). Currently, manufacturers who produce fewer than 10,000 vehicles worldwide qualify for the right to petition NHTSA for an alternative standard.

Niche manufacturers cannot alter their business strategy solely for CAFE

Unlike the large multi-line manufacturers who can market to all kinds of consumers and average compliance across a large number of different models, small niche manufacturers design their vehicles for a particular niche market and cannot easily diverge from their business plan solely for purposes of complying with CAFE.

In today's era of mergers and acquisitions, CAFE creates an unfair competitive advantage for some manufacturers

Today, small limited line niche manufacturers such as Porsche are forced to comply with existing CAFE standards while competitor vehicles like the Corvette (GM) and Jaguar XK8 (produced by Ford) escape CAFE compliance unscathed because their parent companies have the flexibility to produce offsetting economy cars.

California, the state with the most onerous environmental laws, has already recognized the need to provide extra flexibility for independent small limited-line manufacturers

Last year, the California Air Resources Board decided that independent small volume manufacturers (those selling less than 10,000 vehicles in the State of California) should not be forced to build electric cars. Prior to last year, only manufacturers having fewer than 4,500 sales in California were to be exempt from the mandate.

The existing small volume threshold needs to be increased to restore equity

Today, small independent manufacturers like Porsche experience increased sales (consistent with the market in general) yet become relatively smaller and less competitive because of the recent mergers and acquisitions.

Manufacturers producing fewer than 0.5% of the U.S. passenger car and light truck fleet should have the right to apply for an alternative CAFE standard

A threshold of 0.5% of the U.S. passenger car and light truck fleet is consistent with California's decision and allows only very small independent limited-line manufacturers to apply for an alternative standard.

The alternative standard provision has led to fuel economy improvements

While the passenger car CAFE standard has remained unchanged at 27.5 mpg since 1984 (actually decreasing to 26.0 mpg in 1986, 1987 and 1988), alternative standards approved for Rolls-Royce increased 63% over the same time period. Manufacturers must apply for a new alternative standard every two years and are required to base their petition on what is technically achievable.

How is CAFE Unfair to the Independent Small Volume Manufacturer?

Make/Model	Fuel Economy	CAFE Fine Paid by Manufacturer?
Porsche Boxster	22	YES (Porsche)
Porsche 911	21	YES (Porsche)
Chevy Corvette	22	NO (General Motors)
Dodge Viper	14	NO (DaimlerChrysler)
Jaguar XK8	20	NO (Ford)
Lamborghini Murcielago	10	NO (Volkswagen)
Mercedes Benz SL600	15	NO (Daimler/Chrysler)
Ferrari 360	13	NO (Fiat)
Bentley Azure	13	NO (Volkswagen)

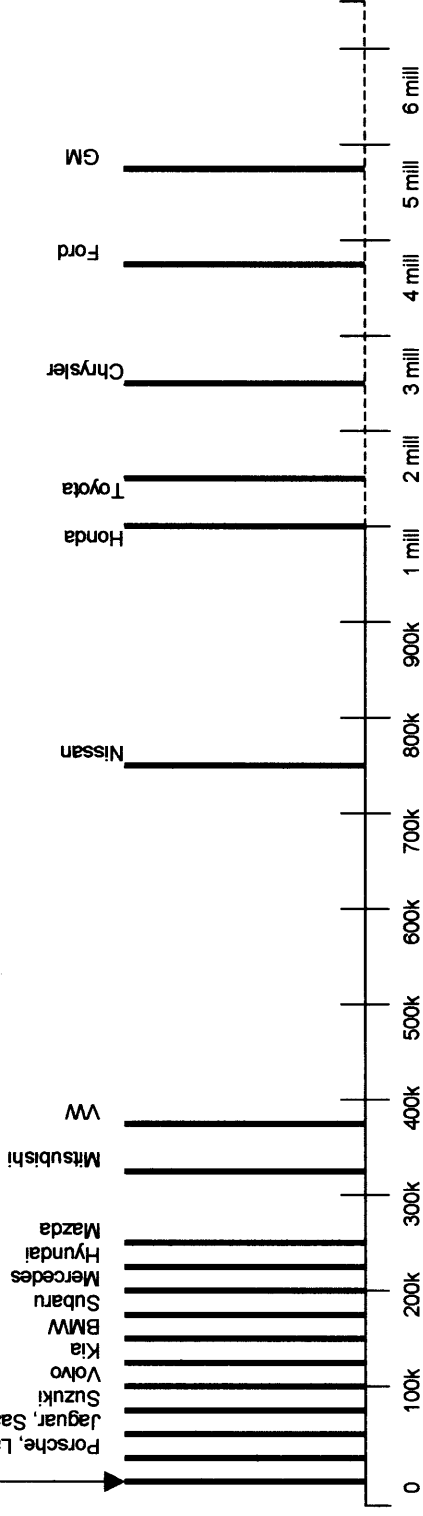
Notes:

- Fuel economy: Combined label values for model year 2002 (except Dodge Viper)
- Source: EPA Fuel Economy Guide (2002)
- Transmission: Manual, if available

February 14, 2002

Lambo, Lotus (114),
RR/Bentley (806), Ferrari
(1200)

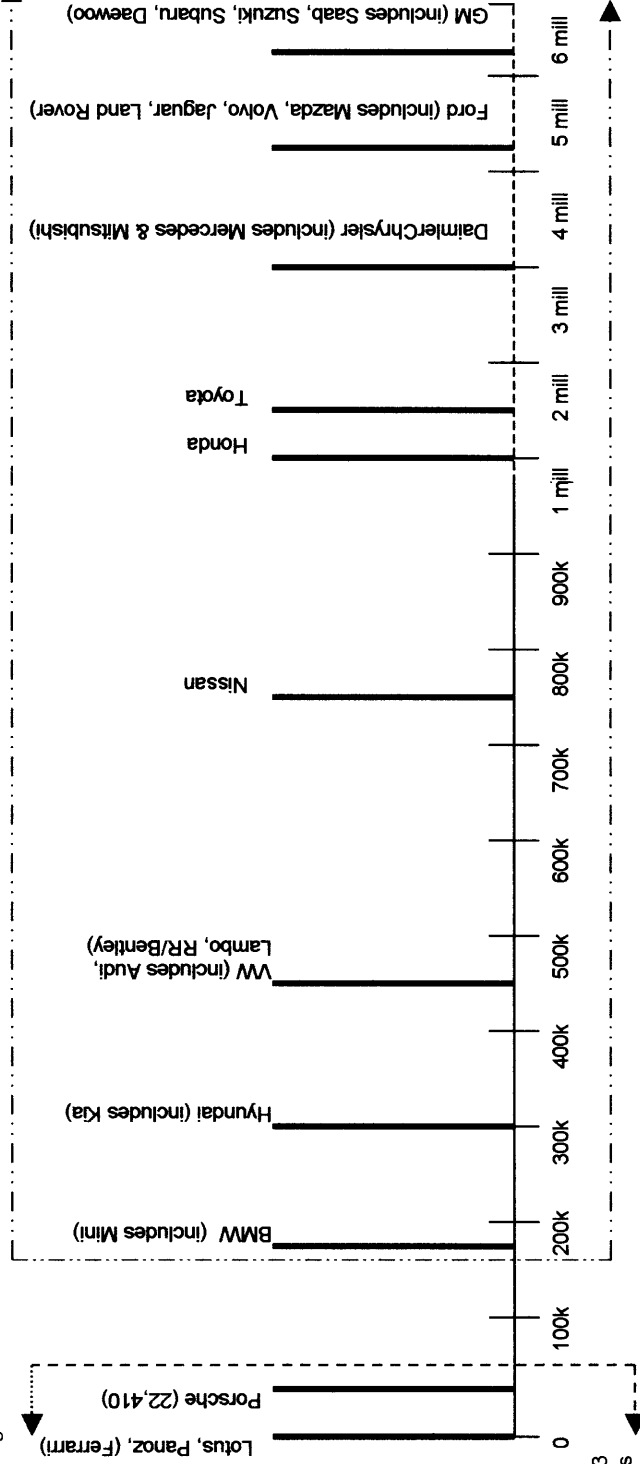
Prior to Recent Mergers & Acquisitions (based on 2000 U.S. sales data)



Post Recent Mergers & Acquisitions (based on 2000 U.S. sales data)

Producing many models: Able to
average compliance across model
lines

0.5% of U.S. Pass. Car &
light trucks



Only 2-3
models

3 independent mfrs. designing for niche markets

PORSCHE
22,410 SALES
TWO MODELS
BOXSTER & 911

NO ABILITY TO
AVERAGE COMPLIANCE
ACROSS MODEL LINES

Small niche manufacturers
with few models should have
the right to petition for an
alternative CAFE standard
(i.e., manufacturers with less
than 0.5% share of market)

FORD MOTOR CO.
4.6 MILLION SALES
DOZENS OF MODELS

GENERAL MOTORS
5.3 MILLION SALES
DOZENS OF MODELS

TOYOTA
1.6 MILLION
SALES

**DAIMLER/
CHRYSLER**
3.0 MILLION
SALES
DOZENS OF
MODELS

HONDA
1.2 MILLION
SALES

CAPABLE OF COMPLYING
BY AVERAGING ACROSS
MODELS

February 14, 2002

[DISCUSSION DRAFT]

AMENDMENT TO S. _____

OFFERED BY _____

At the end of Title __, insert the following:

SEC. __ ALTERNATIVE FUEL ECONOMY STANDARDS

(a) INDEPENDENT LOW VOLUME MANUFACTURERS. -- Section 32902 of Title 49, United States Code, is amended—

(1) By amending subsection (d)(1) to read as follows:

“(1) Except as provided in paragraph (3) of this subsection, on application of an independent manufacturer that sold fewer than 0.5% of the combined number of passenger cars and light trucks sold in the U.S. in the model year 2 years before the model year for which the application is made, the Secretary of Transportation may exempt by regulation the manufacturer from a standard under subsection (a), (b) or (c) of this section. An exemption for a model year applies only if the manufacturer sold fewer than 0.5% of the combined number of passenger cars and light trucks sold in the U.S. in the model year. The secretary may exempt a manufacturer only if the Secretary—”; and

(2) By inserting into subsection (d)(1)(B) the words “and non-passenger automobiles” after “passenger automobiles”; and

(3) By inserting into subsection (d)(2) the words “and non-passenger automobiles” after the words “passenger automobiles”.

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 23, 2000]
[Document not affected by Public Laws enacted between
January 23, 2000 and December 29, 2000]
[CITE: 49USC32902]

TITLE 49--TRANSPORTATION

SUBTITLE VI--MOTOR VEHICLE AND DRIVER PROGRAMS

PART C--INFORMATION, STANDARDS, AND REQUIREMENTS

CHAPTER 329--AUTOMOBILE FUEL ECONOMY

Sec. 32902. Average fuel economy standards

(a) Non-Passenger Automobiles.--At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for automobiles (except passenger automobiles) manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year. The Secretary may prescribe separate standards for different classes of automobiles.

(b) Passenger Automobiles.--Except as provided in this section, the average fuel economy standard for passenger automobiles manufactured by a manufacturer in a model year after model year 1984 shall be 27.5 miles a gallon.

(c) Amending Passenger Automobile Standards.--(1) Subject to paragraph (2) of this subsection, the Secretary of Transportation may prescribe regulations amending the standard under subsection (b) of this section for a model year to a level that the Secretary decides is the maximum feasible average fuel economy level for that model year.

Section 553 of title 5 applies to a proceeding to amend the standard. However, any interested person may make an oral presentation and a transcript shall be taken of that presentation.

(2) If an amendment increases the standard above 27.5 miles a gallon or decreases the standard below 26.0 miles a gallon, the Secretary of Transportation shall submit the amendment to Congress. The procedures of section 551 of the Energy Policy and Conservation Act (42 U.S.C. 6421) apply to an amendment, except that the 15 calendar days referred to in section 551(c) and (d) of the Act (42 U.S.C. 6421(c), (d)) are deemed to be 60 calendar days, and the 5 calendar days referred to in section 551(f)(4)(A) of the Act (42 U.S.C. 6421(f)(4)(A)) are deemed to be 20 calendar days. If either House of Congress disapproves the amendment under those procedures, the amendment does not take effect.

(d) Exemptions.--(1) Except as provided in paragraph (3) of this subsection, on application of a manufacturer that manufactured (whether

in the United States or not) fewer than 10,000 passenger automobiles in the model year 2 years before the model year for which the application is made, the Secretary of Transportation may exempt by regulation the manufacturer from a standard under subsection (b) or (c) of this section. An exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year. The Secretary may exempt a manufacturer only if the Secretary--

(A) finds that the applicable standard under those subsections is more stringent than the maximum feasible average fuel economy level that the manufacturer can achieve; and

(B) prescribes by regulation an alternative average fuel economy standard for the passenger automobiles manufactured by the exempted manufacturer that the Secretary decides is the *maximum feasible average fuel economy level for the manufacturers to which the alternative standard applies.*

(2) An alternative average fuel economy standard the Secretary of Transportation prescribes under paragraph (1)(B) of this subsection may apply to an individually exempted manufacturer, to all automobiles to which this subsection applies, or to classes of passenger automobiles, as defined under regulations of the Secretary, manufactured by exempted manufacturers.

(3) Notwithstanding paragraph (1) of this subsection, an importer registered under section 30141(c) of this title may not be exempted as a manufacturer under paragraph (1) for a motor vehicle that the importer--

(A) imports; or

(B) brings into compliance with applicable motor vehicle safety standards prescribed under chapter 301 of this title for an individual under section 30142 of this title.

(4) The Secretary of Transportation may prescribe the contents of an application for an exemption.

(e) *Emergency Vehicles.*--(1) In this subsection, "emergency vehicle" means an automobile manufactured primarily for use--

(A) as an ambulance or combination ambulance-hearse;

(B) by the United States Government or a State or local government for law enforcement; or

(C) for other emergency uses prescribed by regulation by the Secretary of Transportation.

(2) A manufacturer may elect to have the fuel economy of an emergency vehicle excluded in applying a fuel economy standard under subsection (a), (b), (c), or (d) of this section. The election is made by providing written notice to the Secretary of Transportation and to the Administrator of the Environmental Protection Agency.

(f) *Considerations on Decisions on Maximum Feasible Average Fuel Economy.*--When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider technological feasibility, economic practicability, the effect of other motor vehicle

standards of the Government on fuel economy, and the need of the United States to conserve energy.

(g) Requirements for Other Amendments.--(1) The Secretary of Transportation may prescribe regulations amending an average fuel economy standard prescribed under subsection (a) or (d) of this section if the amended standard meets the requirements of subsection (a) or (d), as appropriate.

(2) When the Secretary of Transportation prescribes an amendment under this section that makes an average fuel economy standard more stringent, the Secretary shall prescribe the amendment (and submit the amendment to Congress when required under subsection (c)(2) of this section) at least 18 months before the beginning of the model year to which the amendment applies.

(h) Limitations.--In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation--

(1) may not consider the fuel economy of dedicated automobiles; and

(2) shall consider dual fueled automobiles to be operated only on gasoline or diesel fuel.

(i) Consultation.--The Secretary of Transportation shall consult with the Secretary of Energy in carrying out this section and section 32903 of this title.

(j) Secretary of Energy Comments.--(1) Before issuing a notice proposing to prescribe or amend an average fuel economy standard under subsection (a), (c), or (g) of this section, the Secretary of Transportation shall give the Secretary of Energy at least 10 days from the receipt of the notice during which the Secretary of Energy may, if the Secretary of Energy concludes that the proposed standard would adversely affect the conservation goals of the Secretary of Energy, provide written comments to the Secretary of Transportation about the impact of the standard on those goals. To the extent the Secretary of Transportation does not revise a proposed standard to take into account comments of the Secretary of Energy on any adverse impact of the standard, the Secretary of Transportation shall include those comments in the notice.

(2) Before taking final action on a standard or an exemption from a standard under this section, the Secretary of Transportation shall notify the Secretary of Energy and provide the Secretary of Energy a reasonable time to comment.

(Pub. L. 103-272, Sec. 1(e), July 5, 1994, 108 Stat. 1059.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)
Source (Statutes at Large)	

32902 (a)..... 15:2002 (b).

Oct. 20, 1972, Pub. L. 92-513, 86 Stat.

947, Sec. 502(a)(1), (3)-(c), (e)

(1st sentence), (f), (h); added Dec.

in the United States or not) fewer than 10,000 passenger automobiles in the model year 2 years before the model year for which the application is made, the Secretary of Transportation may exempt by regulation the manufacturer from a standard under subsection (b) or (c) of this section. An exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year. The Secretary may exempt a manufacturer only if the Secretary--

(A) finds that the applicable standard under those subsections is more stringent than the maximum feasible average fuel economy level that the manufacturer can achieve; and

(B) prescribes by regulation an alternative average fuel

economy standard for the passenger automobiles manufactured by the exempted manufacturer that the Secretary decides is the maximum feasible average fuel economy level for the manufacturers to which the alternative standard applies.

(2) An alternative average fuel economy standard the Secretary of Transportation prescribes under paragraph (1)(B) of this subsection may apply to an individually exempted manufacturer, to all automobiles to which this subsection applies, or to classes of passenger automobiles, as defined under regulations of the Secretary, manufactured by exempted manufacturers.

(3) Notwithstanding paragraph (1) of this subsection, an importer registered under section 30141(c) of this title may not be exempted as

a manufacturer under paragraph (1) for a motor vehicle that the importer-

(A) imports; or

(B) brings into compliance with applicable motor vehicle safety standards prescribed under chapter 301 of this title for an

individual under section 30142 of this title.

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(e) *Emergency Vehicles*.--(1) In this subsection, "emergency vehicle" means an automobile manufactured primarily for use--

(A) as an ambulance or combination ambulance-hearse;

(B) by the United States Government or a State or local

government for law enforcement; or

(C) for other emergency uses prescribed by regulation by the

Secretary of Transportation.

(2) A manufacturer may elect to have the fuel economy of an

emergency vehicle excluded in applying a fuel economy standard under subsection (a), (b), (c), or (d) of this section. The election is made by providing written notice to the Secretary of Transportation and to the Administrator of the Environmental Protection Agency.

(f) Considerations on Decisions on Maximum Feasible Average Fuel

Economy.--When deciding maximum feasible average fuel economy under

this

section, the Secretary of Transportation shall consider technological feasibility, economic practicability, the effect of other motor vehicle